

REMARKS

Restrictions and Election

The Examiner requires restriction of the claims to two distinct inventions, as follows:

- I. Claims 11-16, drawn to a method for evaluating in vivo test substances;
- II. Claims 17-22, drawn to a method for evaluating in vivo substances.
- III. Claims 16-20, drawn to a method for evaluating in vivo substances.

The Examiner states that the inventions are independent and distinct; that they have acquired a separate status in the art as alleged by their different classifications. That a search for each invention is not co-extensive particularly with regard to a literature search, and that a reference that would anticipate on group would not necessarily anticipate or make obvious another group.

a) Election:

Applicant elects Group I, Claims 11-16 for examination, with traverse.

b) Traverse:

The grouped inventions are clearly not independent, and applicants do not believe that the Examiner considers them as such.

The grouped inventions are clearly not distinct.

According to MPEP 806.05(j), related to process (method) inventions, to support a requirement for restriction between two or more related process (method) inventions, two-way distinctness is necessary. For two or more related processes, as in Groups I, II and III, the inventions are distinct if:

- (a) the inventions as claimed do not overlap in scope, i.e. are mutually exclusive;
- (b) the inventions as claimed are not obvious variants; and

(c) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect.

Applicants note that all three conditions are required to find distinctiveness.

The Examiner has not identified any classifications for the three groups. The allegation that the grouped inventions have acquired a separate status in the art is unsupported.

The three groups of method claim involve nearly identical “design, mode of operation, and function”, and almost identical steps: providing a rodent with a pupillary membrane system in a first eye, injecting a substance proximate the papillary membrane; and then examining the papillary membrane.

The substance injected may be described somewhat differently between the groups, but they are not mutually exclusive. The effect being identified in the examining steps may be described somewhat differently between the groups, but they are not mutually exclusive.

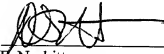
Applicants respectfully request reconsideration and withdrawal of the restriction requirement against, and examination of, all pending claims.

Respectfully submitted,

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